

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture amended Section 3700, subsection (c), of the regulations in Title 3 of the California Code of Regulations pertaining to Oak Mortality Disease Control as an emergency action that was effective on July 6, 2004. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than November 3, 2004.

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period. Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture may certify that there was compliance with provisions of Section 11346.1 of the Government Code within 120 days of the emergency regulation.

Notice is also given that any person interested may present statements or arguments in writing relevant to the action proposed to the agency officer named below on or before September 13, 2004.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law obligates the Department of Food and Agriculture to protect the agricultural industry in California and prevent the spread of injurious pests (Food and Agricultural Code Sections 401 and 403). Existing law also provides that the Secretary may establish, maintain, and enforce such regulations, as he deems necessary, to prevent the spread of pests to protect California's agricultural industry (Food and Agricultural Code Section 5322).

The amendment of Section 3700(c) established that *Camellia* spp. (camellias), *Clintonia andrewsiana* (Andrew's clintonia bead lily), *Dryopteris arguta* (California wood fern), *Smilacina racemosa* (false Solomon's seal) and *Taxus brevifolia* (Pacific yew) are regulated articles and commodities.

The effect of the amendment is to establish the authority for the State to regulate the movement of these associated articles as hosts or potential carriers of the disease from the regulated area to prevent the artificial spread of the disease caused by *Phytophthora ramorum*. There is no existing, comparable federal regulation or statute regarding intrastate movement of regulated articles and commodities.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department of Food and Agriculture has determined that Section 3700 does not impose a new mandate on local agencies or school districts. There is an ongoing mandate created by the original adoption of this regulation. However, the amendment of this regulation, adding new articles and commodities covered, does not impose a new mandate on the local agencies. These local agencies are enforcing an ongoing mandate not impacted by the regulatory action. Additionally, the agricultural commissioners of Alameda, Contra Costa, Humboldt, Lake, Marin, Monterey, Mendocino, Napa, San Mateo, Santa Clara, Santa Cruz, Solano and Sonoma counties requested the amendment of this regulation. Therefore, no additional reimbursement is required for Section 3700(c) under Section 17561 of the Government Code.

The Department has also determined that the amended regulation will involve no additional costs or savings to any state agency, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable savings to local agencies or costs or savings to school districts under Section 17561 of the Government Code and no costs or savings in federal funding to the State.

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed action will not affect housing costs.

EFFECT ON BUSINESSES

The Department has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ASSESSMENT

The Department has made an assessment that the proposed amendments to the regulations would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

ALTERNATIVES CONSIDERED

The Department of Food and Agriculture must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AUTHORITY

The Department amended Section 3700, subsection (c) pursuant to the authority vested by Sections 407, 5321 and 5322 of the Food and Agricultural Code of California.

REFERENCE

The Department amended Section 3700, subsection (c) to implement, interpret and make specific Sections 24.5, 5321 and 5322 of the Food and Agricultural Code.

EFFECT ON SMALL BUSINESS

The amendment of this regulation may affect small businesses.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed action, location of the rulemaking file, request for a public hearing, and final statement of reasons may be directed is: Stephen S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room A-316, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: sbrown@cdfa.ca.gov.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet website (www.cdfa.ca.gov/cdfa/pendingregs).

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, when completed, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulations amended by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of amendment. Any person interested may obtain a copy of said regulations prior to the date of amendment by contacting the agency officer (contact) named herein.

DEPARTMENT OF FOOD AND AGRICULTURE

Date

Deputy Secretary